



August 3, 2016

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: NOTICE OF EX PARTE

WC Docket No. 16-143: *Business Data Services in an Internet Protocol Environment*

WC Docket No. 15-247: *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*

WC Docket No. 05-25: *Special Access for Price Cap Local Exchange Carriers*

RM-10593: *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*

Dear Ms. Dortch:

On August 1, 2016, I spoke by telephone with Chairman Tom Wheeler on behalf of Competitive Carriers Association (“CCA”) and its members. During the meeting, we discussed the importance of the Commission’s accomplishments on 5G deployment to date, and how those accomplishments will help to ensure a rapid roll-out of 5G wireless networks for all carriers. I explained the importance of the Commission’s decision to focus next on business data services (“BDS”) to further achieve progress towards 5G deployment.

The Chairman and I discussed that BDS are critical inputs into competitive carrier networks and will become even more important as carriers work to densify their networks in anticipation of 5G and the technologies it will support. Backhaul costs represent a large percentage of most competitive carriers’ network operating expenses. These costs will increase exponentially as carriers build out more cell sites to meet existing and growing network demands and to deploy 5G.

Although competitive carriers today rely on some time-division multiplexing (“TDM”) services for backhaul (*i.e.*, DS1s and DS3s), I explained that these services will have limited to no use in a 5G world. Instead, I described that carriers need backhaul capable of supporting the load that 5G will require. I expressed the concern that, if the Commission defines all Ethernet above 50 or 100 Mbps as competitive and therefore not subject to regulation,¹ then it will eviscerate any impact this proceeding will have on 5G deployment. Backhaul at 50-100 Mbps or below likely will not support 5G, even if there is only one commercial carrier in a given market.

¹ *Business Data Services in an Internet Protocol Environment, et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, 4830, 4832, 4840 ¶¶ 237, 244, 271 (2016).

To “future-proof” the outcome of this proceeding, and to ensure the Commission meets the goals of 5G deployment, I urged the Chairman to apply a test to high-capacity BDS markets (*i.e.*, above 50 or 100 Mbps) that measures competition to determine where sufficient competition is present to discipline prices. Areas that are deemed not competitive by the test should face price reductions.

Far from subsidizing the network expansion of wireless carriers, reducing the rates of high-capacity BDS in areas that are not competitive will merely correct the anticompetitive issues that plague the current BDS marketplace, allowing multiple providers to offer competitively-priced services to all consumers. By reducing BDS prices where competition is insufficient to otherwise bring down prices, the Commission will eliminate the supracompetitive margin between costs and profits that many BDS providers earn on BDS sales to wireless carriers. This ultimately produces a more competitive market for consumers. Importantly, BDS providers often price backhaul services sold to wireless carriers higher than BDS for enterprise customers sold to wholesale carriers even though the services are exactly the same and even when they are offered at exactly the same location. Moreover, imposing price remedies in non-competitive areas will level the playing field between competitive carriers, who are forced to purchase BDS from third-parties, and their largest wireless competitors, who purchase BDS from their ILEC affiliates at much more favorable rates.

I discussed with the Chairman that ensuring that the Commission’s BDS reform extends to high-capacity backhaul is essential to the future of 5G deployment in this country. The approach supported by CCA and many in the record is a reasonable approach that will provide the Commission with agility to respond to the evolving BDS marketplace in the future, future proofing this proceeding, bringing predictability, and will narrow the application of regulation to only those markets where it is absolutely needed because limited competition has resulted in market power abuses.

This letter is being filed electronically, in accordance with Section 1.1206(b), for inclusion in the record in the above-referenced proceedings.

Respectfully submitted,

Steven K. Berry
President & CEO

COMPETITIVE CARRIERS ASSOCIATION
805 15th Street, N.W.
Washington, D.C. 20005

cc: Chairman Tom Wheeler